

REMARKS

Status of the Claims

The pending Office Action addresses claims 1, 4-10, and 13-25, however claims 7-10 and 20-21 are withdrawn from consideration. Remaining claims 1, 4-6, 13-19, and 22-25 stand rejected.

Applicant thanks the Examiner for the telephone interview on August 17, 2010 with Applicant's undersigned representative.

Amendments to the Drawings

As indicated above, replacement drawings of FIGS. 1C and 1D are attached. FIG. 1D is unchanged. FIG. 1C is amended to conform the drawing with the originally-filed, informal FIG. 1C. No new matter is added.

Amendments to the Claims

Claims 1, 14, 23, and 24 are amended and new dependent claims 66 and 67 are added as indicated above. Support for these amendments can be found throughout the specification and drawings, for example in Figure 1E and paragraph [0053] of the published application. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 112

Claims 1 and 23 are rejected pursuant to 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner argues on page 2 of the Office Action that “[t]he amendment to claims 1 and 23 stating ‘the inferior and superior surfaces are configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed *and fully distally inserted* in the bore...’ (emphasis added) is not supported by the original disclosure.” Although Applicant respectfully disagrees with the Examiner, to expedite prosecution, claims 1 and 23 are amended as indicated above, thereby obviating the Examiner’s rejections.

Rejections of the Claims

Claims 1, 4-6, 13-15, and 22-24 are rejected pursuant to 35 U.S.C. § 102(e) as being anticipated

by U.S. Patent No. 6,872,209 (“Morrison”). Claims 16-19 and 25¹ are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Morrison.

The Examiner agreed in the August 17, 2010 interview that Morrison, as well as over all other cited references, does not teach or suggest “bores in the top and bottom portions … wherein the bore in one of the top and bottom portions comprises a threaded bore … and the bore in the other of the top and bottom portions comprises an unthreaded bore such that the locking mechanism can freely rotate in the unthreaded bore prior to being received within the threaded bore to lock the top and bottom portions in the closed position,” as recited in independent claim 1, and “the bore extending through one of the top and portions comprises a threaded bore for mating with corresponding threads formed on at least a portion of the locking mechanism, and the bore extending through the other of the top and bottom portions comprises an unthreaded bore such that the locking mechanism can freely rotate in the unthreaded bore,” as recited in independent claim 23. Claims 1 and 23, as well as claims 4-6, 13-19, 22, 24, and 25 which depend therefrom, therefore represent allowable subject matter.

U.S. Patent No. 7,722,645

In the August 17, 2010 interview, the Examiner brought U.S. Patent No. 7,722,645 (“Bryan”) to Applicant’s attention. In particular, the Examiner directed Applicant to FIGS. 2 and 5A of Bryan. As requested by the Examiner, to expedite prosecution, Applicant addresses Bryan with respect to independent claims 1 and 23.

Bryan fails to teach or suggest that “the bore in the other of the top and bottom portions comprises an unthreaded bore such that the locking mechanism can freely rotate in the unthreaded bore prior to being received within the threaded bore to lock the top and bottom portions in the closed position,” as recited in claim 1, or that “the unthreaded bore is configured to receive the locking mechanism such that when the threads of the locking mechanism are mated with threads of the threaded bore to lock the top and bottom portions in the closed position, an exterior surface of the locking mechanism faces an interior surface of the unthreaded bore without an intervening element being positioned therebetween,” as recited in claim 23. Instead, in Bryan, as shown in FIG. 2, “clamping

¹ Page 5 of the Office Action indicates that claim 24 is rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Morrison. Applicant presumes that the Examiner intended to reject claim 25 pursuant to 35 U.S.C. § 103(a) as being obvious over Morrison because claim 24 is included in the rejection pursuant to 35 U.S.C. § 102(e) and because the subject matter of claim 25 is discussed on page 5 of the Office Action in the context of the rejection pursuant to 35 U.S.C. § 103(a).

occurs when the set screw 90 is inserted through the upper portion 63 of the C-clamp 60 and threadedly engaged within the recess 58 of the pedicle screw 50 after the morse taper interlock fit is initiated between the pedicle screw 50 and the C-clamp 60.” Bryan, col. 7, lines 40-44. (Emphasis added.)

Accordingly, claims 1 and 23, as well as their various dependent claims, distinguish over Bryan, alone or in combination with any other cited reference, and represent allowable subject matter.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant’s amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

No extension of time is believed to be due with this filing. In the event that a petition for an extension of time is required to be submitted at this time, Applicant hereby petitions under 37 CFR 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned.

No fee is believed to be due with this filing. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 141449, under Order No. 101896-242.

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Respectfully submitted,

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